

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 181 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No

RAJNIKANT RAMASHANKER TRIVEDI

Versus

STATE OF GUJ

Appearance:

MR DEEPAK M SHAH for the appellant
Mr.S.R.Divetia LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 27/02/97

ORAL JUDGEMENT (N.J.Pandya,J.)

The incident relating to the conviction of the accused-appellant under Sec.8(C), 20(b)A(ii) & Sec.22 of Narcotic Drugs and Psychotropic Substances Act (NDPS Act for short) read with Sec.66(6) and 65(A)(i) of the Bombay Prohibition Act happened on 14-12-1989 at about 8.30 P.M.

when on receipt of the prior information the accused-appellant came to be apprehended, searched and found possessing 33 gms of charas. This resulted into Sessions Case No.35 of 1990, tried by the learned Additional Sessions Judge of Ahmedabad(Rural) at Mirzapur.

2. Learned Advocate Mr.D.M.Shah appointed to represent the accused-appellant, who has filed the appeal through Jail has drawn our attention to complaint Exh.21 filed by the PSI, who is not a gazetted Officer. He has not taken precaution to fulfill the requirement of Sec.50 of NDPS Act. He is an Officer below the rank of a gazetted Officer. The accused is to be informed that if he so desires, his search may be carried out either in presence of a Magistrate or a Gazetted Officer. This precaution is incorporated by the Legislature as there are presumptions against the accused, once the possession is established.

3. The Hon'ble Supreme Court in AIR 1994 SC 1872 (State of Punjab vs. Balbir Singh) held that this is a mandatory provision. In another decision reported in 1996(2) SCC 37 (State of Himachal Pradesh vs. Pritichand), it is held that the Court is required to take overall view of the matter. There also, the case against the accused could not be made out by the prosecution.

4. The net result is that, the appeal has to be allowed. It is allowed. The order of conviction and sentence passed by the trial Court is set aside. The accused is ordered to be set at liberty forthwith, if not required for any other purpose.

/duly corrected copy/